

smaller than 1/16-inch minimum height, except as permitted by § 381.500(d)(2).

(q) The following exemptions apply:

(1) Nutrient content claims that have not been defined by regulation and that appear as part of a brand name that was in use prior to November 27, 1991, may continue to be used as part of that brand name, provided they are not false or misleading under section 4(h) of the Act (21 U.S.C. 453(h)(4)).

(2) [Reserved]

(3) A statement that describes the percentage of a vitamin or mineral in the food, including foods intended specifically for use by infants and children less than 2 years of age, in relation to a Reference Daily Intake (RDI) as defined in § 381.409 may be made on the label or in the labeling of a food without a regulation authorizing such a claim for a specific vitamin or mineral.

(4) The requirements of this section do not apply to infant formulas and medical foods, as described in 21 CFR 101.13(q)(4).

(5) [Reserved]

(6) Nutrient content claims that were part of the name of a product that was subject to a standard of identity as of November 27, 1991, are not subject to the requirements of paragraph (b) of this section whether or not they meet the definition of the descriptive term.

(7) Implied nutrient content claims may be used as part of a brand name, provided that the use of the claim has been authorized by FSIS. Labeling applications requesting approval of such a claim may be submitted pursuant to § 381.469.

[58 FR 675, Jan. 6, 1993; 58 FR 43789, Aug. 18, 1993, as amended at 58 FR 47628, Sept. 10, 1993; 59 FR 40215, Aug. 8, 1994; 59 FR 45198, Sept. 1, 1994; 60 FR 208, Jan. 3, 1995; 69 FR 58802, Oct. 1, 2004]

#### §§ 381.414–381.442 [Reserved]

#### § 381.443 Significant participation for voluntary nutrition labeling.

(a) In evaluating significant participation for voluntary nutrition labeling, FSIS will consider only the major cuts of single-ingredient, raw poultry products, as identified in § 381.444, including those that have been previously frozen.

(b) FSIS will judge a food retailer to be participating at a significant level if

the retailer provides nutrition labeling information for at least 90 percent of the major cuts of single-ingredient, raw poultry products, listed in § 381.444, that it sells, and if the nutrition label is consistent in content and format with the mandatory program, or nutrition information is displayed at point-of-purchase in an appropriate manner.

(c) To determine whether there is significant participation by retailers under the voluntary nutrition labeling guidelines, FSIS will select a representative sample of companies allocated by type and size.

(d) FSIS will find that significant participation by food retailers exists if at least 60 percent of all companies that are evaluated are participating in accordance with the guidelines.

(e) FSIS will evaluate significant participation of the voluntary program every 2 years beginning in May 1995.

(1) If significant participation is found, the voluntary nutrition labeling guidelines shall remain in effect.

(2) If significant participation is not found, FSIS shall initiate rulemaking to require nutrition labeling on those products under the voluntary program.

EFFECTIVE DATE NOTE: At 75 FR 82166, Dec. 29, 2010, § 381.443 was removed, effective Jan. 1, 2012. At 76 FR 76890, Dec. 9, 2011, the effectiveness was delayed until Mar. 1, 2012.

#### § 381.444 Identification of major cuts of poultry products.

The major cuts of single-ingredient, raw poultry products are: Whole chicken (without neck and giblets), chicken breast, chicken wing, chicken drumstick, chicken thigh, whole turkey (without necks and giblets; separate nutrient panels for white and dark meat permitted as an option), turkey breast, turkey wing, turkey drumstick, and turkey thigh.

#### § 381.445 Guidelines for voluntary nutrition labeling of single-ingredient, raw products.

(a) Nutrition information on the cuts of single-ingredient, raw poultry products, including those that have been previously frozen, shall be provided in the following manner:

(1) If a retailer or manufacturer chooses to provide nutrition information on the label of these products,

these products shall be subject to all requirements of the mandatory nutrition labeling program, except that nutrition labeling may be declared on the basis of either “as consumed” or “as packaged.” In addition, the declaration of the number of servings per container need not be included in nutrition labeling of single-ingredient, raw poultry products, including those that have been previously frozen.

(2) A retailer may choose to provide nutrition information at the point-of-purchase, such as by posting a sign, or by making the information readily available in brochures, notebooks, or leaflet form in close proximity to the food. The nutrition labeling information may also be supplemented by a video, live demonstration, or other media. If a nutrition claim is made on point-of-purchase materials all of the requirements of the mandatory nutrition labeling program apply. However, if only nutrition information—and not a nutrition claim—is supplied on point-of-purchase materials:

- (i) The requirements of the mandatory nutrition labeling program apply, but the nutrition information may be supplied on an “as packaged” or “as consumed,” basis;
- (ii) The listing of percent of Daily Value for the nutrients (except vitamins and minerals specified in §381.409(c)(8)) and footnote required by §381.409(d)(9) may be omitted; and
- (iii) The point-of-purchase materials are not subject to any of the format requirements.

(b) [Reserved]

(c) The declaration of nutrition information may be presented in a simplified format as specified in §381.409(f) for the mandatory nutrition labeling program.

(d) The nutrition label data should be based on either raw or cooked edible portions of poultry cuts with skin. If data are based on cooked portions, the methods used to cook the products must be specified and should be those which do not add nutrients from other ingredients such as flour, breading, and salt. Additional nutritional data may be presented on an optional basis for the raw or cooked edible portions of the skinless poultry meat.

(e) Nutrient data that are the most current representative data base values contained in USDA’s National Nutrient Data Bank or its published form, the Agriculture Handbook No. 8 series, may be used for nutrition labeling of single-ingredient, raw poultry products, including those that have been previously frozen. These data may be composite data that reflect different classes of turkey or other variables affecting nutrient content. Alternatively, data that reflect specific classes or other variables may be used, except that if data are used on labels attached to a product which is labeled as to class of poultry or other variables, the data must represent the product in the package when such data are contained in the representative data base. When data are used on labels attached to a product, the data must represent the edible poultry tissues present in the package.

(f) If the nutrition information is in accordance with paragraph (e) of this section, a nutrition label or labeling will not be subject to the Agency compliance review under §381.409(h), unless a nutrition claim is made on the basis of the representative data base values.

(g) Retailers may use data bases that they believe reflect the nutrient content of single-ingredient, raw poultry products, including those that have been previously frozen; however, such labeling shall be subject to the compliance procedures of paragraph (e) of this section and the requirements specified in this subpart for the mandatory nutrition labeling program.

[58 FR 675, Jan. 6, 1993, as amended at 58 FR 47628, Sept. 10, 1993; 60 FR 209, Jan. 3, 1995]

EFFECTIVE DATE NOTE: At 75 FR 82166, Dec. 29, 2010, §381.445 was amended as follows, effective Jan. 1, 2012. At 76 FR 76890, Dec. 9, 2011, the effectiveness was delayed until Mar. 1, 2012.

a. Revise the section heading and paragraph (a) and (c);

b. Amend paragraph (d) by removing “should” and adding, in its place, “for products covered in paragraphs (a)(1) and (a)(2) must”;

c. Amend paragraph (e) by removing “its published form, the Agriculture Handbook No. 8 series” and by adding, in its place, “its released form, the USDA National Nutrient Database for Standard Reference.”; and

d. Amend paragraph (f) by adding “provided” after “nutrition information is”.

For the convenience of the user, the revised text is set forth as follows:

**§ 381.445 Nutrition labeling of single-ingredient, raw poultry products that are not ground or chopped products described in § 381.401.**

(a)(1) Nutrition information on the major cuts of single-ingredient, raw poultry products identified in § 381.444, including those that have been previously frozen, is required, either on their label or at their point-of-purchase, unless exempted under § 381.500. If nutrition information is presented on the label, it must be provided in accordance with the provisions of § 381.409. If nutrition information is presented at the point-of-purchase, it must be provided in accordance with the provisions of this section.

(2) Nutrition information on single-ingredient, raw poultry products that are not ground or chopped poultry products described in § 381.401 and are not major cuts of single-ingredient, raw poultry products identified in § 381.444, including those that have been previously frozen, may be provided at their point-of-purchase in accordance with the provisions of this section or on their label, in accordance with the provisions of § 381.409.

(3) A retailer may provide nutrition information at the point-of-purchase by various methods, such as by posting a sign or by making the information readily available in brochures, notebooks, or leaflet form in close proximity to the food. The nutrition labeling information may also be supplemented by a video, live demonstration, or other media. If a nutrition claim is made on point-of-purchase materials, all of the format and content requirements of § 381.409 apply. However, if only nutrition information—and not a nutrition claim—is supplied on point-of-purchase materials, the requirements of § 381.409 apply, provided, however:

(i) The listing of percent of Daily Value for the nutrients (except vitamins and minerals specified in § 381.409(c)(8)) and footnote required by § 381.409(d)(9) may be omitted; and

(ii) The point-of-purchase materials are not subject to any of the format requirements.

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(c) For the point-of-purchase materials, the declaration of nutrition information may be presented in a simplified format as specified in § 381.409(f).

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**§§ 381.446–381.453 [Reserved]**

**§ 381.454 Nutrient content claims for “good source,” “high,” and “more.”**

(a) *General requirements.* Except as provided in paragraph (e) of this section, a claim about the level of a nutrient in a product in relation to the Reference Daily Intake (RDI) or Daily Reference Value (DRV), established for that nutrient (excluding total carbohydrate) in § 381.409(c), may only be made on the label or in labeling of the product if:

(1) The claim uses one of the terms defined in this section in accordance with the definition for that term;

(2) The claim is made in accordance with the general requirements for nutrient content claims in § 381.413; and

(3) The product for which the claim is made is labeled in accordance with § 381.409.

(b) *“High” claims.* (1) The terms “high,” “rich in,” or “excellent source of” may be used on the label or in labeling of products, except meal-type products as defined in § 381.413(1) and main-dish products as defined in § 381.413(m), provided that the product contains 20 percent or more of the RDI or the DRV per reference amount customarily consumed.

(2) The terms defined in paragraph (b)(1) of this section may be used on the label or in labeling of a meal-type product as defined in § 381.413(1) and main-dish product as defined in § 381.413(m), provided that:

(i) The product contains a food that meets the definition of “high” in paragraph (b)(1) of this section; and

(ii) The label or labeling clearly identifies the food that is the subject of the claim (e.g., “the serving of broccoli in this meal is high in vitamin C”).

(c) *“Good Source” claims.* (1) The terms “good source,” “contains,” or “provides” may be used on the label or in labeling of products, except meal-type products as described in § 381.413(1) and main-dish products as defined in § 381.413(m), provided that the product contains 10 to 19 percent of the RDI or the DRV per reference amount customarily consumed.

(2) The terms defined in paragraph (c)(1) of this section may be used on the label or in labeling of a meal-type